Supreme Court of the United States

OCTOBER TERM, 1945

No. 800

H. LESLIE QUIGG,
Petitioner

vs.

CHARLES O. NELSON,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA AND PETITION TO DISPENSE WITH PRINTING OF RECORD, OR, IN THE ALTERNATIVE, TO PRINT AN ABBREVIATED RECORD.

E. F. P. BRIGHAM,
G. A. WORLEY and JACK [illegible],
Counsel for Petitioner.

J. A. PADWAY,
Of Counsel.

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PETITION FOR WRIT OF CERTIORARI

To the Honorable The Justices of the Supreme Court of the United States:

H. LESLIE QUIGG respectfully petitions for a writ of certiorari to review a decision of the Supreme Court of Florida decided July 24th, 1945, reversing a judgment of ouster of the Respondent, Charles O. Nelson, as Chief of Police of Miami, Florida, and reinstating the Petitioner to said office, rendered by the Dade County Circuit Court in favor of the Petitioner herein, which decision, *together with the Petitioner's petition for rehearing and order of the Supreme Court of Florida dated September 10th, 1945, denying the same, are attached hereto as Appendix "A".

A.

Summary Statement of Matter Involved

1. Petitioner, for many years prior to April 10th, 1944, when he was suspended by the City Manager, held office as Chief of Police of Miami. By virtue of the Miami Charter

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**Nelson v. State, ex rel Quigg* (decided July 24, 1945), ...Fla....., 23 So. (2d) 136.

the Chief of Police holds office during good behavior and is subject to removal by the Miami City Commission, only after suspension by the Miami City Manager for specific reasons, among which are "neglect of duty" and "incompetency." On the night of March 29th, 1944, many union bus drivers of public transporation buses of Miami and Miami Beach, assertedly in protest of the failure of the Municipal Judge of Miami to release on appeal bond one of their fellow union drivers that day incarcerated by order of the Municipal Judge for assault and battery, did suddenly assemble and abandon 100 of their buses at the Courthouse in Miami, so as to constitute: (1) a serious traffic hazard and congestion; (2) inconvenience to the many bus passengers enroute at the time; (3) suspension of the public transportation system of two municipalities; (4) a dangerous condition likely to result in injury to surrounding persons and property through disorder and violence.

The Petitioner, summoned by police headquarters from his home after he had retired for the night, arrived with reasonable dispatch on the scene after the buses had been so assembled and abandoned. There the Petitioner was reliably informed and reasonably believed that at twelve o'clock on the same night, unless the controversy was peacefully settled, the unionized municipal water employees intended, in sympathy with the bus drivers, to *stop* work, resulting in the citizens in Miami being entirely without water. The Petitioner immediately took charge of the situation. Drawing upon his police experience of many years, he ordered his police officers to keep cool and calm and to keep a line of traffic open, if possible, while he proceeded to ascertain the cause and the steps necessary to relieve the tense emergency. For this purpose, he immediately went into conference with the union leaders and ascertained that they had created this emergency situation because of their asserted inability to obtain the release on bond of one of their union members then in jail. After being so advised, the Petitioner secured the promise of the union leaders to end the emergency as soon as they were successful in posting an appeal bond for their incarcerated union member. In one hour and

twenty minutes, by the peaceful and lawful means of assisting the union leaders to post an appeal bond with the Circuit Court Clerk, whom the Petitioner had summoned to the Courthouse for the purpose, the Petitioner settled the controversey without disorder, bloodshed or property damage, and dispersed the buses on their scheduled routes, resulting in resumption of public transportation of the two municipalities of Miami and Miami Beach and clearing the City streets, and thereby avoiding, as Petitioner reasonably believed, stoppage of the municipal water supply.

The Petitioner acted without any corrupt motive. His actions were dictated by his honest belief and judgment that what he did was the best way to prevent a riot and property damage in this severe emergency. He bona fide believed he had the lawful privilege to act in the manner he did under Section 301 of the Municipal Code of Miami which regulated traffic and provided for the enforcement of its provisions. Section 301 provided that "in the event of a fire or other emergency or to expedite traffic or to safeguard pedestrians, or when necessary to protect property, officers of the Police or Fire Divisions may direct, as conditions may require, contrary to the provisions herein contained." Furthermore, both the City Manager and the Director of Public Safety, (the Petitioner's immediate superior officer), were fully conversant with the manner and means which the Petitioner was adopting to settle the controversy and to dissolve the emergency, and the Director of Public Safety that night approved, in the presence of the City Manager, the Petitioner's settlement of the controversy.

Unlike the Petitioner, the City Manager had no previous experience with an emergency of this kind. (1) He admitted that it was a matter of opinion as to what was the expedient thing to do, (2) and that one could with honesty and good faith do as the Petitioner had done during this emergency. (3) Law enforcement officers of great experience in strikes

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(1) Vol. II, Exhibit A, Page 309.
(2) Vol. II, Exhibit A, Page 295.
(3) Vol. II, Exhibit A, Page 295.

and emergencies of this kind testified that in their opinion as police officers that the Petitioner exercised good judgment in his handling of the emergency. H. J. Mellon, police inspector for many years of Pittsburgh, Pennsylvania, so testified (4). Phillip Trembley, for twenty years on the Detroit police force so testified (5). Edward Hoppe, police officer of Buffalo, New York and Norfolk, Virginia, and the Captain of Miami's auxiliary police so testified (6). Petitioner himself testified that it was discretionary with him to use his judgment in an emergency. (7) Veteran police officers on the Miami Police Force testified that Chief Quigg used good judgment. Lt. Fred E. Bratt, with nineteen years of experience as a Miami traffic officer so stated. (8) Traffic Sgt. C. H. Richardson, with eighteen years' experience on the Miami Police Force so testified. (9)

While the Petitioner was engaged in making an investigation immediately after the night of March 29th, 1944, of those responsible on that night for the emergency situation which they created, the City Manager launched an independent investigation of his own, in his office, assisted by the Director of Public Safety, four City Attorneys, and the County Solicitor (the State prosecuting officer for Dade County, Florida, where Miami is located), which lasted continuously until April 10, 1944, on which date he suspended Petitioner without even consulting with him concerning this matter. The City Manager refused to permit Petitioner to participate in the investigation which he was conducting; handicapped the Petitioner's investigation by tying up on subpoena and examing witnesses in his office needed by the Petitioner to fix responsibility; by instructing police witnesses summoned before him not to discuss the matter with anyone including the Petitioner; and by failing to make avail-

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(4) Vol. IV, Exhibit A, Pages 846-849.
(5) Vol. IV, Exhibit A, Page 891.
(6) Vol. IV, Exhibit A, Page 868.
(7) Vol. III, Exhibit A, Page 753.
(8) Vol. III, Exhibit A, Pages 702-703.
(9) Vol. III, Exhibit A, Page 651.

able to the Petitioner at any time any of the testimony or evidence assembled by the City Manager so Petitioner could use the same to prosecute any offenders which the City Manager's investigation revealed.

2. Under the Miami charter the City Manager is the municipal head of the city government. He has power to control all departments of the City, including the Department of Public Safety which consists of a director, the chief of police and fire, and the subordinate police and fire officers of Miami. The City Manager has exclusive jurisdiction to suspend the Chief of Police. The City Commission of Miami has exclusive jurisdiction to try the Chief of Police only on the charges of suspension preferred by the City Manager. Prior to suspending Petitioner, the City Manager ruled, during his investigation on advice of the City Attorney (who by charter provision is the "prosecuting attorney of the Municipal Court"), that, inasmuch as the County Solicitor intended to prosecute the bus drivers for violating State laws with respect to street blocking and the Florida "no strike" law, that they should not be prosecuted by the City for violating municipal ordinances and to do so would be "prosecution." For that reason no attempt to prosecute the bus drivers has been made by any municipal officer, including the Respondent, Charles O. Nelson, who was appointed Chief of Police shortly after Petitioner was removed on May 25th, 1944, and who has been continuously acting as Chief of Police since September of 1945.

3. On April 10th, 1944, the City Manager suspended the Petitioner upon nine charges. Upon Petitioner's motion to quash all the charges, the City Commission, consisting of five members, quashed charges No. 5 and 8. At the conclusion of Petitioner's trial the City Commission found, either by a unanimous vote or a vote of four to one, the Petitioner not guilty of charges No. 2, 3 and 6, but, by a three to two vote, found the Petitioner guilty of charges No. 1, 4, 7 and 9, and thereupon removed him from office and deprived him of his property rights and pension acquired during his many years of service as Chief of Police of Miami.

The nine charges preferred by the City Manager against Petitioner read as follows:

> "1. You are guilty of neglect of duty by reason of your neglect and failure, as Chief of Police in the Division of Police of the City of Miami, Florida, to enforce the ordinances of said City and the criminal statutes of the State of Florida at the time of violations thereof committed in your presence and under your observation at and during the time of a strike of bus drivers in said City on the night of March 29, 1944.
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> 2. You are guilty of neglect of duty by reason of your neglect and failure, as Chief of Police in the Division of Police of the City of Miami, Florida, to give orders or instructions to the officers and other personnel of said Division of Police to enforce the ordinances of said City and the criminal statutes of the State of Florida, during or subsequent to the violations thereof committed at and during the time of a strike of bus drivers in said City on the night of March 29, 1944.
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> 3. You are guilty of misfeasance in the office of Chief of Police in the Division of Police of the City of Miami, Florida, by reason of the fact that, in violation of your oath of office, you devoted your time and your energies at and during the time of a strike of bus drivers in said City on the night of March 29, 1944, to meeting the demands of the leaders of the drivers who were violating in your presence and under your observation the ordinances of said City and the criminal statutes of the State of Florida, and in aiding and abetting said leaders to effect the release from the City jail of a prisoner who had been lawfully convicted in the Municipal Court of said City and had been lawfully sentenced to imprisonment in said jail.
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> 4. You are guilty of neglect of duty by reason of your neglect and failure, as Chief of Police in the Division of Police of the City of Miami, Florida, to cause or to bring about the apprehension, arrest and punishment of any or all of numerous persons who violated the ordinances of said City and the criminal statutes of the State of Florida at and during the time of a strike of bus drivers in said City on the night of March 29, 1944.

5. You are guilty of neglect of duty by reason of your neglect and failure, as Chief of Police in the Division of Police of the City of Miami, Florida, to take any action or measures of any kind which would prevent at any future time a recurrence of a public emergency and of violations of law similar to those which prevailed at and during the time of a strike of bus drivers in said City on the night of March 29, 1944.

6. You are guilty of failure to obey orders given by proper authority by reason of your neglect and failure, while serving as Chief of Police in the Division of Police of the City of Miami, Florida, to obey and carry into affect orders to enforce the traffic ordinances of said City, given to you by the City Manager of said City on the night of March 29, 1944, at and during the time of a strike of bus drivers in said City.

7. You are guilty of incompetence as Chief of Police in the Division of Police of the City of Miami, Florida, by reason of the fact that you have permitted said Division of Police to fall into and be in a state of disorganization, disunity, discord and inefficiency.

8. You have become and are unfit to serve as Chief of Police of the City of Miami, Florida, for the reason that you have lost and do not have the confidence and respect of the public of said City.

9. Your acts of commission and of omission which are set forth and described in the above and foregoing grounds for your suspension constitute conduct unbecoming a police officer of the City of Miami, Florida, and render you unfit to serve as Chief of Police in the Division of Police of said City."

4. On May 4th, 1944, during the trial of Petitioner's case before the City Commission, said Commission, by a three to two vote, passed a resolution granting Petitioner's motion to quash charge No. 7, and charge No. 7 was accordingly stricken from the City Manager's specification of charges preferred against the Petitioner. Among others, the grounds of Petitioner's motion to strike were that charge No. 7, and its bill of particulars, alleged no facts but merely vague conclusions and generalities against which the Petitioner could not fairly

defend because he was not adequately notified of any facts constituting his asserted incompetency; that the charge was stale and infected with laches; that the charge was not germane to the alleged bus strike which occasioned Petitioner's suspension and operated unfairly to prejudice, hinder and delay the trial of the bus strike charges. On May 5th and 6th, 1944, the Miami Herald, a morning newspaper published in Miami which was admittedly hostile to Petitioner and had openly advocated his removal from office, published two editorials admittedly designed and intended to prejudice Petitioner's trial by influencing the City Commission to restore charge No. 7 against the Petitioner. These editorials particularly intimidated Commissioner Hosea, who had cast the deciding vote to strike charge No. 7 against Petitioner. Admittedly operating under the influence, intimidation and duress of this newspaper, and notwithstanding that the Commissioner declared when he moved to reinstate charge No. 7 against Petitioner that he honestly believed he did the right thing, when he voted to strike this charge, Commissioner Hosea nevertheless, on the next trial session of the Petitioner after these editorials were published and after the City Manager had rested his case against the Petitioner, namely, on May 8th, 1944, moved, and secured the passage of his motion by a three to two vote, including his own, that charge No. 7 be reinstated against Petitioner. This was done over Petitioner's protest and without the City Commission rescinding its previous resolution striking charge No. 7 from the City Manager's specification of charges against Petitioner. Petitioner promptly moved to disqualify Commissioner Hosea on the ground of prejudice, and supported his motion by accompanying affidavits, as required by the Florida law, but this motion was promptly denied by the City Commission, and Commissioner Hosea, at the conclusion of Petitioner's trial, voted to remove the Petitioner on said charge. Again Petitioner moved to disqualify Commissioner Hosea when later, as a result of his questioning of the Petitioner, he brought on a bitter controversy between himself and the Petitioner concerning this Commissioner's interference with the Police Department and his intoxication in the City Manager's office, but the

City Commission refused to grant Petioner's motion to disqualify Commissioner Hosea and Commissioner Hosea refused to recuse himself from Petitioner's trial on either of Petitioner's motions therefor. Except for Commissioner Hosea's vote for removal, the Commission would have been equally divided on the question of whether the Petitioner was guilty of the charges upon which he was removed and whether he should have been removed on these charges, which would have resulted in Petitioner's reinstatement to office.

Section 26 of the City Charter pertaining to the suspension and removal of the Chief of Police reads as follows:

> "The City Manager shall have the exclusive right to suspend the Chief of Police and Fire Chief for incompetence, neglect of duty, immorality, drunkenness, failure to obey orders given by proper authority, or for any other just and reasonable cause. If either of such chiefs be so suspended the City Manager shall forthwith certify the fact, together with the cause of suspension, to the Commission who within five (5) days from the date of receipt of such notice, shall proceed to hear such charges and render judgment thereon, which judgment shall be final."

Petitioner contended under this Section that the charge once having been stricken by the City Commission, could only be restored by the City Manager and not by the City Commission, since the City Manager alone had power to prefer charges.

By decision of the Supreme Court of Florida, Miami police officers have a property right in their offices protected by the Fourteenth Amendment of the United States Constitution:

> *". . . . . public position and the emoluments thereof is property that one may not be deprived of without due process. . . . . .

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*"*Dan D. Rosenfelder, as Director of Public Safety, etc., et al v. C. O. Huttoe* (Decided December 14, 1945), ...So.....;

Also:
DuBose v. Kelly, 132 Fla. 548, 181 So. 11.

> Under our system of jurisprudence, depriving one of his substance, whether it be lands or chattels or public position is a serious matter and should not be permitted, except under strict requirement of the law when due process is observed."

Petitioner's quo warranto information alleged:

> . . . . . that the attempted reinstatement of said Charge No. 7 by said City Commission against the Relator, and the removal of the Relator from his office on said charge No. 7, constitutes taking and depriving him of his property rights of office, and his pension rights to which he is lawfully entitled without due process of law, contrary to the 14th Amendment of the Constitution of the United States.

The Circuit Court of Dade County, Florida, in ousting the Respondent, Charles O. Nelson, and restoring Petitioner to his office, held:

> "From the record, the Court here and now finds, concludes, decides, adjudicates, and rules, that the conviction of H. Leslie Quigg, Relator, and his removal from office, described in the record, were each unreasonable, unjustified, contrary to right and justice, illegal, unconstitutional, and without foundation in fact or law, and were of no legal significance, importance, or consequence whatsoever, and were null and void acts."

In his petition for rehearing, Petitioner without avail specifically called to the attention of the Supreme Court, in Ground No. 2 thereof, that he had been denied a fair and impartial trial by the City Commission under the Fourteenth Amendment of the United States Constitution on charge No. 7 by reason of the matters complained of herein.

5. Neither by common law nor by Statute of Florida does the Mayor, who presided at the trial of the Petitioner, have power to administer oaths to witnesses appearing before the Commision. Nevertheless, over the objection of the Petitioner, he alone administered the witnesses' oaths to the City Manager's witnesses, while the witnesses of the Respondent were sworn by a notary public. At the conclusion

of the City Manager's case, and after he rested, Petitioner moved for a directed verdict on the ground that none of the testimony given against him by the witnesses for the City Manager was given under the sanctity of an oath, but this motion was denied by the City Commission. The sanctity of an oath is essential to due process. In his quo warranto information, Petitioner claimed this lack of a witness oath administered to the City Manager's witnesses denied him a fair trial. He specifically called this to the attention of the Supreme Court in Ground No. 1 of his petition for rehearing and claimed the benefit of the Fourteenth Amendment to the United States Constitution, without avail.

6. The City Commission found the Petitioner guilty of not enforcing *Chapter* 21968, Laws of Florida for 1943, prohibiting, on pain of criminal prosecution, members of labor unions striking without a majority vote of its membership. In reversing the Circuit Court, which found Petitioner not guilty of this alleged neglect of duty, the Supreme Court of Florida expressly held, on July 24th, 1945, that there was sufficient evidence before the City Commission to convict the Petitioner of not enforcing this "no strike" act, and specifically held that the members of said bus drivers union were, on the night of March 29th, 1944, engaging in an "unwarranted, unofficial and unlawful strike".* Yet the Supreme Court of Florida, on October 5th, 1945, in the case of *State, ex rel. Frazier v. Coleman,* ** (habeas corpus action to release the President of the bus driver's union when prosecuted by the County Solicitor of Dade County for the same incident), discharged Frazier from custody because the Supreme Court then held that he had not violated the identical "no strike" law, inasmuch as the bus drivers, when they parked their buses at the Courthouse, were not participating in a "strike", but a "demonstration" to which the Statute was inapplicable. In other words, the Supreme Court of Florida sustained the

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**Nelson v. State, ex rel. Quigg* (July 24, 1945), 23 So. (2d) 136, at 137.

***State, ex rel. Frazier v. Coleman* (Oct. 5, 1945), 23 So. (2d) 477.

removal of the Petitioner because he failed to enforce a State law which the Supreme Court later specifically held, on the same occurrence had not been violated.

7. Section 24 (a) of the Miami charter reads:

> "The Chief of Police or any policeman of the City of Miami, may arrest without warrant, any person violating any of the ordinances of the City committed in the presence of such officer, and when knowledge of the violation of any ordinance of said City shall come to the said Chief of Police or policeman, not committed in his presence, he shall make affidavit before the Judge or Clerk of Municipal Court against the person charged with such violation, whereupon, said Judge or Clerk shall issue a warrant for the arrest of such person."

The record is undisputed that Petitioner did not see any bus drivers violate any law by illegally parking their buses, as the buses were parked and the bus drivers scattered in the crowd of five hundred or more people assembled around the Courthouse before the Chief arrived. Arrest upon affidavit and warrant requiring proper evidence through investigation was, therefore, essential. The Florida Statute of Limitations on all crimes allegedly committed by the bus drivers in their demonstration was and is two years.* The time limit set by the City Manager in his testimony for Petitioner's action against the bus drivers was an indefinite one to be controlled by whether the delay in prosecution would be so long that the Petitioner would "let the evidence get away from him" (Transcript Testimony, Page 331). The City Manager had recorded prior to his suspension of the Petitioner all evidence taken by him in his investigation of the "demonstration", but failed to make it available to the Petitioner or to inquire what progress Petitioner had been able to make in his own investigation before suspending him on April 10th, 1944, not only for not arresting the bus drivers prior to that time but by bringing about their punishment

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*Section 932.05, Florida Statutes Annotated.

as well. (See Charge No. 4 quoted above). The Supreme Court of Florida ignored this feature of the case and based their ratio decidendi in their opinion against Petitioner that Petitioner "knuckled under to the intimidating demands and requirements of those whose conduct evidenced the fact that they would supplant law and order with mob violence".* In doing this the Florida Supreme Court denied Petitioner a fair trial and deprived him of his property right of office without due process of law because the City Commission had acquitted the Petitioner of charge No. 3 which alleged in substance this very same thing. In convicting the Petitioner upon a charge on which the City Commission had acquitted the Petitioner, the Florida Supreme Court deprived the Petitioner of his property rights of office without due process of law and denied him a fair trial, as Petitioner pointed out to the Supreme Court, without avail, in Ground No. 5 of his petition for rehearing.

8. Previously the Supreme Court of Florida held that the removal by the City Commission, composed of five members, of a Miami municipal officer, where the charter was silent on the required vote of the Commission to remove the officer, required more than a three to two vote by the applicable general law which was made by reference a part of the City Charter of Miami, and which required a two-thirds vote of the City Commission for the removal of a municipal officer.** In his quo warranto information Petitioner claimed the benefit of this provision because he was found guilty and removed by a three to two vote of the Commission. In failing to give him the benefit of this Florida Statute***Which they previously held to be applicable in a similar case, the Supreme Court of Florida denied the Petitioner the equal protection of the law and deprived him of his property rights without due

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*_Nelson v. State, ex rel. Quigg_, 23 So. (2d) 136 138.

**_State, ex rel. Gibbs v. Bloodworth_, 134 Fla. 369, 184 So. 1.

***_Section_ 165.18, Florida Statutes Annotated.

process of law, contrary to the Fourteenth Amendment of the United States Constitution.

B.

Statement As to Jurisdiction

Jurisdiction is invoked under Title 28, U.S.C.A., Section 344 (b) (Judicial Code, Section 237 (b) as amended by the Act of February 13, 1925).

The Judgment of the Supreme Court of Florida was rendered July 24, 1945. Application for rehearing, timely filed, was denied September 10th, 1945.

By order of Honorable Hugo L. Black, Associate Justice of the Supreme Court of the United States, dated December 6th, 1945, time for filing petition for certiorari herein was extended to and including February 5th, 1946.

Jurisdiction of the Court is invoked because the judgment of the Supreme Court of Florida, in reversing the Circuit Court which found the removal of the Petitioner from office to be constitutional, so plainly and substantially departed from the fundamental principles upon which our Government is based, that it can with truth and propriety be said that, if the judgment be suffered to remain, the Petitioner would be deprived of his property rights of office and pension and denied the equal protection of the law in violation of the Fourteenth Amendment to the Constitution of the United States within the rule announced in *Wilson v. State of North Carolina, ex rel., Caldwell,* 169 U. S. 586, 18 S. Ct. 435, 42 L. Ed. 865.

Jurisdiction is also invoked because the judgment of the Miami City Commission removing the Petitioner from his office of Chief of Police, which judgment was reversed by the Circuit Court but affirmed by the Supreme Court of Florida, was not induced solely by evidence and argument in open court and the law applicable thereto, but by public

print during Petitioner's trial before the City Commission, which interferred with the course of justice by premature statement, argument and intimidation, resulting in the Petitioner thereby being denied a fair and impartial trial before said Commission and thus being deprived of his property rights of office and pension without due process of law, contrary to the Fourteenth Amendment to the United States Constitution and within the rule announced by this Court in *Patterson v. Colorado*, 205 U. S. 454, 27 S. Ct. 556, 51 L. Ed. 879; *Potter v. Dowd*, 146 Fed. (2d) 244.

Jurisdiction is further invoked on the ground that the Supreme Court of Florida, in its decision and judgment, necessarily passed upon and decided adversely to the Petitioner his claim, asserted in his quo warranto information (Tr. 20), that he had been deprived of his property rights of office and pension rights, contrary to the Fourteenth Amendment to the Constitution of the United States, even though the language of the opinion of the Supreme Court of Florida is not expressly to this effect.

Petitioner plainly asserted his claim to the protection of the Fourteenth Amendment to the United States Constitution, and alleged that the action of the City Commission in purporting to reinstate Charge No. 7 against the Petitioner and removing him upon said charge violated said Amendment. The demurrer which was filed to the quo warranto information (ground 34 thereof), challenged this feature of the quo warranto information and asserted that the reinstatment of said charge was constitutional (Tr. 42). The Trial Judge, in overruling the demurrer, specifically held that the action of the City Commission in removing the Petitioner was unconstitutional (Tr. 57). This order was assigned as error by the Respondent, Nelson (Tr. 74), and the Supreme Court of Florida, in its opinion reversing the Trial Judge and his final judgment of ouster, necessarily passed upon and determined this matter adversely to the Petitioner. The following cases support jurisdiction:

Adams v. Russell, 229 U. S. 353, 57 L. Ed. 1224;

White River Lumber Co. v. State of Arkansas, ex rel., Applegate, 279 U. S. 692, 73 L. Ed. 903;

Geo. O. Richardson Mach. Co. v. Scott, 276 U. S. 128; 72 L. Ed. 497;

Southwestern Bell Tel. Co. v. State of Okla., 303 U. S. 206; 82 L. Ed. 751;

Lovell v. City of Griffin, Ga., 303 U. S. 444; 82 L. Ed. 949;

People of State of N. Y., ex rel., Bryant vs. Zimmerman. 278 U. S. 63; 73 L. Ed. 184.

U. S. v. Pink, 315 U. S. 203; 86 L. Ed. 796;

Indiana, ex rel., Anderson v. Brand, 303 U. S. 95, 82 L. Ed. 444, 113 A. L. R. 1485.

Jurisdiction of the Court is further invoked because the Supreme Court of Florida, in its opinion and decision adverse to the Petitioner, held him guilty of charge No. 3 upon which the City Commission acquitted Petitioner and found him not guilty. This is clearly borne out by the Florida Supreme Court's opinion concerning the fault of the Petitioner, in the following language:

> "Fault is not to be found so much with the Chief because he assisted in securing the release on bond of a bus driver who had been incarcerated lawfully, an act which to the most fantastic mind does not come within the purview of his official duties, *but rather that he failed to perform his duties and became an appeaser to the extent that he knuckled under to the intimidating demands and requirements of those whose conduct evidenced the fact that they would supplant law and order with mob violence.*"

At Petitioner's first opportunity he raised, in his petition for rehearing, the question that this finding of the Supreme Court of Florida deprived him of his property rights of office without due process of law, contrary to the Fourteenth Amendment of the Federal Constitution (See ground No. 4,

Petition for rehearing), and the Supreme Court of Florida necessarily passed upon this claim of the Petitioner when said Court denied his petition for rehearing.

Again jurisdiction is invoked because the Supreme Court of Florida, in Petitioner's case* found him guilty of neglect of duty for failing to enforce a State law which the Supreme Court of Florida later held had not been violated.** The first opportunity Petitioner had to claim that these inconsistent holdings of the Florida Supreme Court denied him his property rights of office, contrary to the Fourteenth Amendment of the United States Constitution, is in this petition for certiorari.

We think the following cases support jurisdiction of this Court under these circumstances:

Harris v. Dennie, 7 L. Ed. 683, 8 Curtis 422;

Eureka Lake & Yuba Canal Co. v. Yuba County, 116 U. S. 410, 43 L. Ed. 521;

Potter v. Dowd, 146 Fed. (2d) 244.

C.

The Questions Presented

(1) Has a chief of police, protected from arbitrary removal by civil service provisions of a city charter, been deprived of his property rights of office without due process of law, contrary to the Fourteenth Amendment to the United States Constitution, when he is removed from office on the ground of neglect of duty because, in good faith and in the exercise of his best judgment, he adopted lawful and peaceful means, as he was allowed to do under a City ordinance, to

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**Nelson v. State, ex rel. Quigg,* (July 24, 1945) .....Fla....., 23 So. (2d) 136.

***State, ex rel. Frazier v. Coleman,* (Oct. 5, 1945) .....Fla. ..... 23 So. (2d) 477.

promptly dissolve a serious emergency and traffic hazard that paralyzed the public transportation system of two municipalities and threatened to suspend the municipal water supply, especially where he had no reasonable opportunity prior to his removal to cause the arrest and punishment of the offenders?

(2) Has a chief of police, protected from arbitrary removal by civil service provisions of a city charter, been deprived of his property rights of office without due process of law, contrary to the Fourteenth Amendment to the United States Constitution, when, solely by reason of political pressure brought to bear on the Commission by a newspaper hostile to the chief, the city commission after striking a charge against the chief of police, on their own motion reinstated the charge and removed the chief of police on the same?

(3) Has a chief of police, protected from arbitrary removal by civil service provisions of a city charter, been deprived of his property rights of office without due process of law, contrary to the Fourteenth Amendment to the United States Constitution, when one of the commissioners who cast the deciding vote against him, refused to disqualify himself as one of the judges trying the then chief, upon the chief's timely motion therefor, when said commissioner was prejudiced and biased against the chief and unable, by reason of such prejudice, to give the chief of police a fair and impartial trial?

(4) Has a chief of police, protected from arbitrary removal by civil service provisions of a city charter, been deprived of his property rights of office without due process of law, contrary to the Fourteenth Amendment to the United States Constitution, when the Supreme Court of Florida affirmed his removal on the ground that he had neglected his duty to enforce against union bus drivers a State law against strikes, which law they subsequently held had not been violated by the bus drivers?

(5) Has a chief of police, protected from arbitrary removal by civil service provisions of the city charter, been deprived of his property rights of office without due process of law, contrary to the Fourteenth Amendment to the United States Constitution, when the witnesses produced against him during his trial which resulted in his removal were not required, upon timely objection by the chief, to give their testimony under sanctity of an oath?

(6) Has a chief of police, protected from arbitrary removal by civil service provisions of the city charter, been deprived of his property rights of office without due process of law, contrary to the Fourteenth Amendment of the United States Constitution, when the Supreme Court of Florida, notwithstanding its holding that a Court could not substitute its judgment for that of a city commission trying a chief of police, nevertheless affirmed his removal from office and based the reason for its decision upon the subject-matter of a charge upon which the City commission found the chief not guilty?

(7) Has a chief of police, protected from arbitrary removal by civil service provisions of a city charter, been deprived of his property rights of office without due process of law, contrary to the Fourteenth Amendment of the United States Constitution, and denied the equal protection of the law, contrary to said amendment, when the Supreme Court of Florida affirmed the chief's removal, notwithstanding that he was removed by less than a two-thirds vote of the city commission trying the chief which the statute governing such removal required?

D.

Reasons Relied on for Allowance of the Writ

The reasons relied upon by Petitioner for allowance of the writ are:

1. The decision of the Supreme Court of Florida is in direct conflict with *Wilkes v. Dinsman*, 48 U. S. 88, 12 L.

Ed. 618, and with the decision of the Supreme Court of Florida in *Hammond v. Curry*, 153 Fla. 245, 14 So. (2d) 390, in both of which cases it is held that a public officer cannot be penalized where in good faith he accomplished a lawful result, even though in so doing he may have committed an error of judgment. This rule is especially applicable in this case where *Section* 301 of the Miami Traffic Code, Ordinance No. 2574 enacted by the Miami City Commission, gives the Chief of Police the discretionary privilege to act contrary to the provisions of said Traffic Code (for the non-enforcement of which Petitioner was removed by the City Commission) in the event of an "emergency, or to expedite traffic, or to safeguard pedestrians, or when necessary to protect property".* The failure to accord to the Petitioner the benefit of this law denied him the equal protection of the law and deprived him of his property rights of office and pension without due process of law, contrary to the Fourteenth Amendment to the United States Constitution. A correct decision in this case is of transcendent and vital importance to every civil service police officer in the country protected in his tenure from arbitrary removal.

2. On the same day, namely, July 24th, 1945, Petitioner's case (*Nelson v. State, ex rel. Quigg*, 23 So. (2d) 136) was decided. The Supreme Court of Florida also decided the case of *Pennekamp v. State*, 22 So. (2d) 875, wherein the conviction for contempt of the Miami Herald Publishing Company, which publishes the Miami Herald, for publishing

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*"301. DUTIES OF POLICE. That hereafter it shall be the duty of Police Officers of this City to enforce the provision of this ordinance, and they are hereby vested with all the power and authority necessary for the enforcement thereof, provided that, in the event of a fire or other emergency or to expedite traffic or to safeguard pedestrians, or when necessary to protect property, officers of the Police or Fire Division may direct, as conditions may require, contrary to the provisions herein contained." (See Page 905, Vol. IV of transcript of testimony taken before City Commission, attached to quo warranto information of Petitioner as Exhibit "A").

an editorial attacking two Circuit Court Judges of Dade County, Florida, was upheld because, among other reasons, the Supreme Court of Florida said:

> "Freedom of the press cannot be exploited in a manner to destroy fair and impartial trial";

and also,

> "The theory of our system of fair trial is that the determination of every case should be induced solely by evidence and argument in open court and the law applicable thereto and not by any outside influence, whether of private talk or public print."

The Supreme Court of Florida arbitrarily and capriciously ignored these announced fundamental principles in Petitioner's case by sanctioning Petitioner's removal on charge No. 7 which, after being duly stricken by the Miami City Commission from the City Manager's specification of charges against the Petitioner, was later, during the course of Petitioner's trial, but after the City Manager had rested his case against the Petitioner, reinstated, by the motion and the vote of a Commissioner who admittedly reversed his position from striking said charge to reinstating it, because he was influenced and intimidated by the Miami Herald into so doing by reason of editorials, published during Petitioner's trial before the City Commission, condemning the Commissioner for his vote in striking the charge and plainly advising him to reinstate it. This same Commissioner whose vote was necessary both to reinstate the charge against the Petitioner and to remove the Petitioner from office on said charge, because his vote constituted the majority vote in each instance, did vote for the removal of the Petitioner on said charge. Thus the Petitioner was denied the equal protection of the law and was denied a fair and impartial trial, and thus he was deprived of his property rights of office and pension without due process of law and in violation of the Fourteenth Amendment to the United States Constitution.

3. The Supreme Court of Florida arbitrarily and capriciously ignored its rule announced in the case of *State Board of*

Funeral Directors v. Cooksey, 148 Fla. 271, 4 So. (2d) 253, where it held that a member of a Board of Funeral Directors and Embalmers should not sit in judgment upon an accused brought before the Board when the prejudice of a member of the Board against the accused is made to appear, but that the Board should act without the participation of such prejudiced member, even though the Statute, (Chapter 17950 Acts of Florida 1937) which created the Board did not provide for the disqualification of such prejudiced Board member.

During Petitioner's trial before the City Commission the Miami Herald on successive days published two editorials,* against the Petitioner and Commissioner Hosea, designed and intended to influence, prejudice and intimidate Commissioner Hosea into reinstating charge No. 7 against the Petitioner which Commissioner Hosea had previously voted, with two other Commissioners, during Petitioner's trial to strike from the City Manager's charges against Petitioner. Reached by such editorials and acting on their advice so to do, Commissioner Hosea, whose vote was necessary to constitute a majority vote of the City Commission, moved, voted for and secured the reinstatement of charge No. 7 against the Petitioner on a three to two vote of the City Commission. His willingness to sacrifice Petitioner's constitutional right to a fair and impartial trial was made all the more manifest when he declared, as he moved to reinstate the charge, that his vote striking it out represented his honest belief that it was the right thing to do, but that the wrong interpretation had been placed on his vote.** Petitioner then promptly moved the City Commission to disqualify Commissioner Hosea and objected to his further participation in Petitioner's trial. This motion was denied by the City Commission and Commissioner Hosea refused to rescue himself from Petitioner's trial.

Later during Petitioner's trial he objected again to Com-

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*Transcript of record before Supreme Court of Florida, Page 18.

**Exhibit "A", Vol. II, Page 375.

missioner Hosea's further participation as judge in his case and moved for his disqualification when, as a result of Commissioner Hosea's interrogation of the Petitioner concerning Commissioner Hosea's interference with the Police Department, this Commissioner engaged in a bitter controversy over this subject, and whether or not he was drunk in the City Manager's office. Notwithstanding that it became and was apparent that Commissioner Hosea was unyieldingly hostile and prejudiced against the Petitioner as a result of this controversy and said editorials, the City Commission refused to disqualify him to sit in judgment on Petitioner and Commissioner Hosea refused to recuse himself as a judge of the Pettitioner, but instead, chose to sit in judgment on the Petitioner and to cast the deciding vote against him for his removal from office. Petitioner was thus deprived of a fair and impartial trial guaranteed him by the Fourteenth Amendment to the United States Constitution, and his property rights of office and pension were taken from him without due process of law, contrary to said Amendment.

4. Notwithstanding that the City Manager who preferred the charges against the Petitioner denied that he suspended Petitioner because he did not prosecute the bus drivers under State laws, as well as under municipal ordinances, for their acts on the night of March 29, 1944* the City Manager's charge No. 1 and 4, upon which the City Commission removed the Petitioner, respectively charged the Chief of Police with neglect of duty in failing to enforce:

> ". . . . . the criminal statutes of the State of Florida at the time of . . . . . a strike of bus drivers in said City on the night of March 29, 1944" (Charge No. 1)

And, in failing to bring about:

> "the apprehension, arrest and punishment of any or

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*Page 305, Vol. II, Transcript of Testimony taken before City Commission, attached to quo warranto information as Exhibit "A".

all of numerous persons who violated . . . . the criminal statutes of the State of Florida at and during the time of a strike of bus drivers in said City on the night of March 29, 1944." (Charge No. 4).

The bill of particulars specifically alleges, *Chapter* 21968, Laws of Florida 1941 * as a State law which the Chief of Police failed to enforce. The City Commission found the Chief of Police guilty of failing to enforce this State law and removed him from office for such failure. The Supreme Court of Florida sanctioned this removal in its decision reversing the Circuit Court of Dade County, Florida, which had held the Petitioner's removal from office illegal. In its decision, the Supreme Court of Florida refers to the action of the bus drivers and their leader, Frazier, as an "unwarranted, unofficial and unlawful strike". ** Today the Chief of Police of Miami is removed from his office because he failed to enforce said State law prohibiting a strike of the bus drivers on the night of March 29, 1944.

In the case of *State, ex rel. Frazier v. Coleman,* (Fla. October 5, 1945) 23 So. (2d) 477, in which the same union bus leader so strongly condemned in the Quigg decision as the leader of the "strike" of bus drivers, was discharged from custody on habeas corpus by the Supreme Court because the Supreme Court held that said State Law was not violated, because the bus drivers were "demonstrating" not "striking" on the night of March 29, 1944. These inconsistent decisions of the Supreme Court of Florida demonstrate that said Court arbitrarily and capriciously affirmed the City Commission's removal of the Petitioner from his office, and, in so doing, denied him the equal protection of the law and deprived him of his property rights of office and pension without due process of law, contrary to the Fourteenth Amendment of the United States Constitution.

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*Page 23, Vol. I, Exhibit "A" of proceedings before City Commission.

**_Nelson v. State, ex rel. Quigg,_ (Fla. July 24, 1945) 23 So. (2d) 136, 137

5. On timely objection made by the Petitioner that testimony produced against him by the City Manager should be under the sanctity of an oath, the City Commission refused to require any of the City Manager's witnesses against the Petitioner to be sworn by any official of the State of Florida duly authorized to administer an oath, but permitted the Mayor, acting as Chairman of the City Commission at Petitioner's trial, to administer an oath to the City Manager's witnesses, notwithstanding that said Mayor was not authorized, either by any State Statute or by the common law, to administer such an oath. The Supreme Court of Florida has held * that "an attempted oath administered by one who is himself not qualified to administer it is abortive and in effect no oath". It is essential to due process that, in an adversary proceeding, witnesses should be required to give their testimony against an accused under the sanctity of an oath. The failure of the Supreme Court of Florida to require this essential prerequisite of due process, though it was brought to the attention of the Supreme Court of Florida specifically in Petitioner's pleadings, his brief and petition for rehearing, operated to deprive the Petitioner of his property rights of office and pension without due process of law, and denied him the equal protection of the laws.

6. The City Commission of Miami acquitted the Petitioner of Charge No. 3, reading as follows:

> "You are guilty of misfeasance in the office of Chief of Police in the Division of Police of the City of Miami, Florida, by reason of the fact that, in violation of your oath of office, you devoted your time and your energies at and during the time of a strike of bus drivers in said City on the night of March 29, 1944, to meeting the demands of the leaders of the drivers, who were violating in your presence and under your observation the ordinances of said City and the criminal statutes of the State of Florida, and in aiding and abetting said leaders to effect the release from the City jail of a prisoner who had been lawfully convicted in the Municipal Court of

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**Crockett v. Cassels*, 95 Fla. 851, 116 So. 865

said City and had been lawfully sentenced to imprisonment in said jail."

But the Supreme Court of Florida convicted him of his charge because the ratio decidendi of its decision is as follows:

> "Fault is not to be found so much with the Chief because he assisted in securing the release on bond of a bus driver who had been incarcerated lawfully, an act which to the most fantastic mind does not come within the purview of his official duties, but rather that he failed to perform his duties and became an appeaser to the extent that he knuckled under to the intimidating demands and requirements of those whose conduct evidenced the fact that they would supplant law and order with mob violence."*

In Petitioner's case also the Court held:

> "The fact that it is not the province of an appellate court to try cases de novo on a cold typed transcript is too elementary to require emphasis."

The Supreme Court denied to the Petitioner this elementary rule last quoted, and, in effect, did try him de novo and found him guilty of charge No. 3, contrary to the findings of the City Commission. In so doing the Supreme Court of Florida denied to the Petitioner the equal protection of the law and deprived him of his property rights of office and pension without due process of law, contrary to the Fourteenth Amendment to the United States Constitution.

7. The Supreme Court of Florida, in *State v. Bloodworth*** held that *Section* 2948, C. G. L. of Florida (*Section* 165.18 Florida Statutes Annotated), was a part of the City Charter of the City of Miami and required a two-thirds vote of the Miami City Commission for the removal of a city official by

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**Nelson v. State, ex rel. Quigg*, 23 So. (2d) 136, 138.

***State v. Bloodworth*, 134, Fla. 369, 184 So. 1

said Commission. Said Section 165.18 reads as follows:

> "Powers of Council concerning election returns, expulsion, etc.—The city or town council may judge of the election returns and qualifications of its own members, make such by-laws and regulations for their own guidance and government as they may deem expedient and enforce the same by fine or penalty, and compel attendance of its members; and two-thirds of the council may expel a member of the same or other officer of the city or town for disorderly behavior or malconduct in office."

A two-thirds vote of the City Commission of Miami would mean a four to one vote of the City Commission. Petitioner was removed by a three to two vote, and he timely objected before the City Commission to his removal by such vote. In his pleadings, in his brief, and in his petition for rehearing, Petitioner called this to the attention of the Supreme Court of Florida. The Supreme Court of Florida did not give the Petitioner the benefit of this law and, in so doing, denied him the equal protection of the laws and deprived him of his property rights of office and pension without due process of law, contrary to the Fourteenth Amendment to the United States Constitution.

Prayer for Writ

WHEREFORE your Petitioner prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Clerk of the Supreme Court of Florida, commanding that Court to certify and send to this Court for review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case, entitled "Charles O. Nelson, Appellant vs. State of Florida, ex rel., H. Leslie Quigg, Appellee", and that the judgment of the Supreme Court of Florida may be reviewed by this Honorable Court and that your Petitioner may have such other and further relief in

the premises as to this Honorable Court may seem meet and just; and your Petitioner will ever pray.

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"Copy of Supreme Court Opinion"

In the Supreme Court of Florida

JUNE TERM, A. D. 1945

EN BANC

CHARLES O. NELSON, *Appellant,*

vs.

STATE OF FLORIDA, ex rel,

H. LESLIE QUIGG, *Appellee.*

Opinion filed July 24, 1945.

An Appeal from the Circuit Court for Dade County, Ross Williams, Judge, J. W. Watson, Jr., Franklin Parson and John M. Murrell, for Appellant. G. A. Worley and Jack Kehoe and E. F. P. Brigham, for Appellee.

HOBSON, CIRCUIT JUDGE

This case had its inception strictly as a judicial proceeding in the Circuit Court of the 11th Judicial Circuit in an action initiated by the filing of an information in quo warranto in the name of the State of Florida on relation of H. Leslie Quigg Relator, and against Charles O. Nelson, Respondent. Its true genesis, however, was in a hearing before the City Commission of the City of Miami. This hearing was inaugurated by the City Manager and had as its purpose the determination, as a matter of fact, of whether the charges filed against Quigg, the then Chief of Police of Miami, were true and required Quigg's removal from office. The City Charter of Miami authorizes such action and prescribes the procedure to be followed. We find that there was a legally sufficient compliance with statutory requirements in every particular in connection with the hearing before the City Commission. As a result of this full and complete hearing, the City Commission removed Mr. Quigg from the office of Chief of Police.

Thereafter Charles O. Nelson was installed as Quigg's successor. The Circuit Judge in effect reversed the action of the City Commission by the entry of a judgment of ouster against the Respondent Nelson in the quo warranto proceedings.

Many questions have been posed for our consideration and to aid us in a proper determination of this controversy. We deem it sufficient to say that the answer to one of these questions is determinative of the case. As to all other assignments of error and questions presented, we find, upon an examination of the entire record, no harmful or prejudical error.

The question which is determinative of this case on appeal (and it was before the Circuit Court in a proceeding in the nature of an appeal) may be stated in more than one form. We prefer to pose the query in the following verbiage—does a consideration of the record in its entirety disclose the ruling of the City Commission to be sustained by substantial evidence? We have held, and it seems to be an almost universal rule, that the findings of fact made by an administrative board, bureau, or commission, in compliance with law, will not be disturbed on appeal if such findings are sustained by substantial evidence. (Hammond, L. v. City of Miami, Fla. 153 Fla. 245, 14 So. 2d 390; Jenkins v. Curry, City Manager et al., 18 So. 2d 521; Callahan v. A. B. Curry, 153 Fla. 739, 15 So. 2d 688; Marshall vs. Pletz, 317 US 383, 63 S, Ct. 284, 67 L. ed 348; Virginia Electric & P. Co. vs. National Labor Re. Bd., 319 US 533, 63 S. Ct. 1214, 87 L ed 1568). The underlying and salient reasons for this safe and sane rule need not be repeated here. The fact that it is not the province of an appellate court to try cases de novo on a cold typed transcript is too elementary to require emphasis. This rule finds its counterpart in, if indeed it is not the twin brother of, the rule which requires an appellate court to give great weight to the findings of fact made by a jury or a chancellor and to sustain such findings unless there is no substantial evidence to support them. (See Broxson v. State, 99 Fla. 1187, 128 So. 628; Smith vs. Midcoast Inv. Co., 127 Fla. 455, 173 So. 348; Marcus vs. Hull, 142 Fla. 406, 195 So. 170).

The rule invoked herein is salutary and founded in good common sense and irrefutable logic. It should be adhered to religiously. The advent of the talking moving picture probably has given us a preview of a sound reason for its ultimate abolition. However, until this possible avenue of escape has been made adaptable to, and a requirement in, judicial proceedings, the rule should remain inviolate.

Upon a careful consideration of the complete record, we find that the ruling of the City Commission is sustained by substantial evidence. It was the failure of the learned Circuit Judge to apply the rule which we invoke herein which caused him to fall into error. It is not difficult, however, to understand how a Circuit Judge, whose daily work is predominantly fact finding in character, might easily overlook this rule.

It is unnecessary to a proper determination of this controversy to detail the evidence which was before the City Commission. It is appropriate, nevertheless, at this moment, when the members of our armed forces dice with death on the far-flung battle fronts and our form of government, indeed our very existence, is being challenged by a large portion of the peoples of the earth, to refer as briefly as possible to the unbelievable situation which developed and was attendant upon the Miami bus drivers' unwarranted, unofficial and unlawful strike. This incident, coupled with its ramifications as disclosed by the evidence, presented ample justification for the ruling made by the City Commission. The congregation of busses about the Court House in downtown Miami, which was brought about by the unauthorized orders and directions of certain leaders of the bus drivers' union, created a figurative coronary thrombosis at the very heart of the metropolitan area. All parties to this controversy agree that a grave situation existed. Counsel for Quigg contend that he exercised his discretion and best judgment and should not have been removed even if his course had not been productive of satisfactory results. This was Quigg's position before the City Commission.

But what course of conduct did Chief Quigg pursue? At the time of this strike he was the principal law enforcement officer of the City of Miami. Almost without exception every child of school age in America knows what the words "Law enforcement officer" mean—one invested with the authority and charged with the duty to enforce the law. It is that simple. No one denied the fact that multiple city ordinances were violated right and left by the bus drivers at the voluntary direction of the union leaders, particularly one Frazier. That such violations were known to the chief is not challenged and could not be consistently denied. No one with the normal human senses could have unwittingly overlooked them. But if he did so overlook them he can find no comfort in that fact. Thereby his incompetance would have been clearly established.

During this strike, according to Quigg's own testimony, he could have called to his assistance three hundred sixty-eight policemen within fifteen to forty-five minutes. In addition, a change of police shifts took place at which time the outgoing police as well as the incoming ones could have been held and their combined number would have been sufficient to have eliminated at least the serious traffic hazard with its attendant grave potentialities.

In the face of this situation, the chief took only one step which even he might fairly consider affirmative conduct in line of duty. To one of his subordinates he said, "Keep cool and calm and keep the line of traffic open, if possible." To the Court this statement speaks for itself. It was more in the nature of an aside remark than a forceful command or direction. Moreover, the record fails to show either any serious effort to perform his duties or any proximate accomplishment thereof. Quigg was either incompetent, as aforementioned, or deliberate in the avoidance of his immediate duties. It appears that all the rest of his time and energies were devoted, not to law enforcement or official duties, but to a course of conduct prescribed, required and demanded by the leaders of the bus drivers' union. His conduct can be best described by the word which has become

known and accepted universally as a synonym for the surname Chamberlain.

Fault is not to be found so much with the Chief because he assisted in securing the release on bond of a bus driver who had been incarcerated lawfully, an act which to the most fantastic mind does not come within the purview of his official duties, but rather that he failed to perform his duties and became an appeaser to the extent that he knuckled under to the intimidating demands and requirements of those whose conduct evidenced the fact that they would supplant law and order with mob violence. Law enforcement officers cannot be so intimidated, cowed, overawed and swayed from their paths of duty if we are to preserve—that which throughout one hundred sixty-eight years of our national existence we, a body of free people, have fought, bled and died to preserve —the quasi Utopian dream of our forefathers which we now so proudly and popularly term "The American way of life."

The judgment of ouster should be, and it is hereby reversed.

CHAPMAN, C. J., TERRELL, BROWN, BUFORD, SEBRING, J. J. and SANDLER, CIRCUIT JUDGE CONCUR.

SANDLER, CIRCUIT JUDGE, CONCURRING:

I concur in the opinion prepared by Judge Hobson. While this cause originated in the Circuit Court of the Eleventh Judicial Circuit, nevertheless, it brought for review and not for retrial the proceedings before the City Commission. It was not the province of the Circuit Court to retry the case on the record and substitute its judgment for the judgment of the City Commission, but it was the duty of the Circuit Court to review the proceedings to determine if the jurisdictional requirements were complied with and if the judgment of the City Commission found support in the record. That was the question there and is likewise the question here.

There were nine charges filed against the Chief of Police, two of which were quashed, he was acquitted on three and found guilty on four. The charges, on which the Chief of Police was convicted, accused him of neglect of duty by reason of his neglect and failure to enforce the Ordinances of the City of Miami and Criminal Statutes of the State of Florida; failure to bring about the apprehension, arrest and punishment of the persons who violated the said Ordinances and Statutes at and during the time of a strike by the bus drivers in the City on the night of March 29, 1944, and incompetence, as Chief of Police, by reason of the fact, that he had permitted the police department to fall into a state of disorganization, disunity, discord and inefficiency.

The defense in this case may be best summed up by the testimony of the Chief of Police himself, when he testified,

> "I didn't see anybody violate the law, and I didn't see anybody—I saw laws violated, cars parked after they were violated, so I didn't do anything." * * * "The action I took I thought was the best, because it was discretionary. I had the discretionary powers to use my best judgment in case of an emergency and I thought the easiest was the best, which proved to be."

With eighty-three buses congregated around the City Hall about ten o'clock at night, instead of complying with his oath of office to enforce the Ordinances and the Statutes, the Chief took the easiest way out and permitted the bus drivers to take over, one of whom in response to a question inquiring as to the nature of the trouble replied,

> "The main issue is: Who is the biggest—the city Court Judge or 600 bus drivers."

There are times when discretion may be the better part of valor, but never at the expense of law and order.

When a government of men is substituted for a government of law liberty disappears and tyranny prevails. History now

in the making has so clearly demonstrated this as to make comment unnecessary.

A careful study of the voluminous record in this case convinces me that not only is there substantial evidence in the record to support the findings and judgment of the City Commission, but that its judgment is entirely consistent therewith.